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4 Attorney for Plaintiff
5 BETH SILVERSTEIN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 BETH SILVERSTEIN,)	Case No.: 3:21-cv-7815
)	
9 Plaintiff,)	COMPLAINT FOR: BREACH OF THE
)	EMPLOYEE RETIREMENT INCOME
10 v.)	SECURITY ACT OF 1974 (ERISA)
)	
11 THE LINCOLN NATIONAL LIFE)	
12 INSURANCE COMPANY,)	
)	
13 Defendant.)	

14
15 Plaintiff, BETH SILVERSTEIN (hereafter "Plaintiff"), alleges against the Defendant as follows:

16 **I. JURISDICTION**

17 1. Plaintiff's Complaint relates to an employee welfare benefit plan as defined by the Employee
18 Retirement Income Security Act of 1974, 29 U.S.C. §1001 et seq. (hereafter "ERISA"). This Court's
19 jurisdiction is invoked pursuant to 28 U.S.C. §1331 and 29 U.S.C. §1132(e), (f), and (g).

20 2. Plaintiff has exhausted all administrative remedies related to the denial of the disability plans
21 that are the subject of this Complaint.

22 **II. INTRADISTRICT ASSIGNMENT**

23 3. At all times relevant to this Complaint, Plaintiff was a resident of the County of Alameda,
24 therefore, venue is proper within the Northern District of California under 28 U.S.C. §1132(e)(2).

1 4. Plaintiff's Complaint may be assigned to the San Francisco or Oakland Division pursuant to
2 Local Rule 3-2.

3 **III. PARITES**

4 5. At all times relevant, Plaintiff was a participant in the REFUGEE & IMMIGRANT
5 TRANSITIONS insurance plan (hereafter "the Plan"), which provides disability benefits to its
6 participants (Group Policy No. 00095022937800000).

7 6. At all times relevant, the Plan and its benefits were insured by and administered by THE
8 LINCOLN NATIONAL LIFE INSURANCE COMPANY (hereafter "Defendant").

9 7. At all times relevant, the Plan was a welfare benefit plan within the meaning of ERISA and
10 was purchased by REFUGEE & IMMIGRANT TRANSITIONS (hereafter "Refugee Transitions") to
11 offer, *inter alia*, disability benefits to its employees, including Plaintiff.

12 8. At all times relevant, Defendant, was a corporation organized under statutes in the State of
13 Indiana and doing business in California within the County of Alameda.

14 **IV. GENERAL ALLEGATIONS**

15 9. Plaintiff was hired by Refugee Transitions on or around September 1, 2017, as a teacher of
16 adult education. Plaintiff continued to work at Refugee Transitions in this capacity until sometime on
17 or around December 10, 2018, when she ceased work as she became too disabled to work due to
18 neurocognitive disorder, reduced cognition, memory decline, and other cognitive deficits.

19 10. The Plan's elimination period provided that coverage for Plaintiff under the Plan was
20 effective on February 1, 2018. The Plan excluded payments for disabilities that occur within twelve
21 months of a claimant's effective date if caused by a pre-existing condition, which the Plan defined as
22 a sickness or injury for which a claimant sought medical treatment within the three months prior to
23 said claimant's effective date.
24

1 11. On or around December 10, 2018, Plaintiff began experiencing deficits in concentration,
2 memory problems, difficulty communicating with students, and other mental processing problems.
3 Records dated December 10, 2018, from Plaintiff's medical providers noted that Plaintiff reported
4 her cognition is dramatically reduced, she has been repeatedly losing her train of thought, having to
5 take pauses midsentence, and that she cannot handle basic cognitive tasks like simple arithmetic.
6 Plaintiff reported to her provider that she taught her class that day yet was shocked when she
7 managed to get through it.

8 12. On or around April 25, 2019, Plaintiff's treating physician diagnosed Plaintiff with a major
9 neurocognitive disorder that rendered her unable to work due to "memory impairment, poor focus,
10 and poor attention". Plaintiff had theretofore not been diagnosed with said condition.

11 13. On June 27, 2019, Defendant denied Plaintiff's claim on the grounds that Plaintiff's
12 disability was caused by a pre-existing condition, as defined by the Plan, and therefore Plaintiff was
13 excluded from receiving benefits. Plaintiff timely appealed on December 23, 2019.

14 14. On or around November 5, 2020, Defendant retained a doctor to perform an evaluation of
15 Plaintiff's claim, and said doctor agreed Plaintiff had a pre-existing mental health condition as
16 defined by the Plan; however, when asked if there was evidence of a pre-existing *neurocognitive*
17 *disorder* during the relevant lookback period *or* if Plaintiff's pre-existing mental health condition
18 caused or substantially contributed to Plaintiff's neurocognitive disorder in question, Defendant's
19 doctor responded, "None noted in the documentation reviewed."

20 15. In a decision letter dated January 11, 2021, Defendant upheld their denial of benefits to
21 Plaintiff, this time on the grounds that Plaintiff's neurocognitive disorder, which Defendant
22 conceded was *not* pre-existing, did not render Plaintiff disabled as defined by the Plan.

1 16. Plaintiff made proper and timely claims for the benefits due her under the Plan. Despite
2 Plaintiff meeting the definition of disability under the Plan's policies at all times relevant herein,
3 Defendant denied Plaintiff's entitlement to disability benefits.

4 17. Plaintiff has complied with all of the conditions precedent to receive the benefits under the
5 terms and conditions of the Plan, yet Defendant has failed to pay Plaintiff the benefits she is due.

6 **CLAIM FOR RELIEF**
7 **CAUSE OF ACTION: BREACH OF INSURANCE CONTRACT**

8 18. Plaintiff hereby incorporates by reference paragraphs 1 through 17 above as if set forth in
9 full herein.

10 19. ERISA Section 502(a)(1)(B), 29 U.S.C.A. §1132(a)(1)(B) permits a plan participant to bring
11 a civil action to recover benefits due a participant under the terms of a plan, and/or to clarify a
12 participant's right to future benefits.

13 20. At all times herein mentioned, Plaintiff was a beneficiary under the Plan and Plaintiff has
14 been totally disabled under the terms and conditions of said Plan.

15 21. Defendant agreed to pay benefits to Plaintiff in accordance with the provisions of the
16 policies governing the Plan. Defendant has violated and continue to violate the terms of the Plan and
17 Plaintiff's rights thereunder by denying Plaintiff's claim for disability benefits under the Plan.

18 22. Furthermore, Defendant, by terminating Plaintiff's entitlement to benefits under the Plan,
19 has caused Plaintiff to lose her eligibility and entitlement to other benefits, such as, *inter alia*,
20 survivor benefits, life insurance benefits, and health care benefits.

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff prays for judgment in her favor and against Defendant as follows:

23 A. Order Defendant pay benefits due Plaintiff under the Plan from the beginning of her
24 disability through the date judgment is entered;

1 B. Order Defendant pay future benefits due Plaintiff under the Plan until such time as Plaintiff
2 is no longer disabled within the meaning of the Plan;

3 C. Order Defendant to pay all interest as allowed by law;

4 D. Award Plaintiff reasonable attorney fees and costs in an amount to be shown according to
5 proof; and

6 E. Provide any and all other relief the Court deems just and proper.

7 Date: October 6, 2021

Respectfully submitted,

8 UNRUH LAW, P.C.

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